
By: **Senator Stone**
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Committee Report: Favorable with amendments
Senate action: Adopted
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CHAPTER _____

1 AN ACT concerning

2 **Family Law - Child Support Guidelines - Third Party Payments**

3 FOR the purpose of altering the definition of "actual income" under the child support
4 guidelines to include certain third party payments to or for a minor child;
5 requiring certain third party payments to or for a child to be set off against the
6 child support obligation under the guidelines; requiring certain third party
7 payments to or for a child that exceed the current child support obligation to be
8 credited toward existing child support arrearage; providing that the revision of
9 the guidelines may be grounds for requesting a modification of a child support
10 award under certain circumstances; and generally relating to child support
11 guidelines.

12 BY repealing and reenacting, with amendments,
13 Article - Family Law
14 Section 12-201, 12-202(b), and 12-204(j) through (m)
15 Annotated Code of Maryland
16 (1999 Replacement Volume and 2003 Supplement)

17 BY adding to
18 Article - Family Law
19 Section 12-204(j)
20 Annotated Code of Maryland
21 (1999 Replacement Volume and 2003 Supplement)

22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
23 MARYLAND, That the Laws of Maryland read as follows:

1

Article - Family Law

2 12-201.

3 (a) In this subtitle the following words have the meanings indicated.

4 (b) "Income" means:

5 (1) actual income of a parent, if the parent is employed to full capacity; or

6 (2) potential income of a parent, if the parent is voluntarily
7 impoverished.

8 (c) (1) "Actual income" means income from any source.

9 (2) For income from self-employment, rent, royalties, proprietorship of a
10 business, or joint ownership of a partnership or closely held corporation, "actual
11 income" means gross receipts minus ordinary and necessary expenses required to
12 produce income.

13 (3) "Actual income" includes:

14 (i) salaries;

15 (ii) wages;

16 (iii) commissions;

17 (iv) bonuses;

18 (v) dividend income;

19 (vi) pension income;

20 (vii) interest income;

21 (viii) trust income;

22 (ix) annuity income;

23 (x) Social Security benefits;

24 (xi) workers' compensation benefits;

25 (xii) unemployment insurance benefits;

26 (xiii) disability insurance benefits;

27 (XIV) FOR THE OBLIGOR, ANY THIRD PARTY PAYMENT PAID TO OR
28 FOR A MINOR CHILD AS A RESULT OF THE OBLIGOR'S DISABILITY, RETIREMENT, OR
29 OTHER COMPENSABLE CLAIM;

1 [(xiv)] (XV) alimony or maintenance received; and

2 [(xv)] (XVI) expense reimbursements or in-kind payments received
3 by a parent in the course of employment, self-employment, or operation of a business
4 to the extent the reimbursements or payments reduce the parent's personal living
5 expenses.

6 (4) Based on the circumstances of the case, the court may consider the
7 following items as actual income:

8 (i) severance pay;

9 (ii) capital gains;

10 (iii) gifts; or

11 (iv) prizes.

12 (5) "Actual income" does not include benefits received from
13 means-tested public assistance programs, including temporary cash assistance,
14 Supplemental Security Income, food stamps, and transitional emergency, medical,
15 and housing assistance.

16 (d) "Adjusted actual income" means actual income minus:

17 (1) preexisting reasonable child support obligations actually paid;

18 (2) except as provided in § 12-204(a)(2) of this subtitle, alimony or
19 maintenance obligations actually paid; and

20 (3) the actual cost of providing health insurance coverage for a child for
21 whom the parents are jointly and severally responsible.

22 (e) "Combined adjusted actual income" means the combined monthly adjusted
23 actual incomes of both parents.

24 (f) "Potential income" means income attributed to a parent determined by the
25 parent's employment potential and probable earnings level based on, but not limited
26 to, recent work history, occupational qualifications, prevailing job opportunities, and
27 earnings levels in the community.

28 (g) "Ordinary and necessary expenses" does not include amounts allowable by
29 the Internal Revenue Service for the accelerated component of depreciation expenses
30 or investment tax credits or any other business expenses determined by the court to
31 be inappropriate for determining actual income for purposes of calculating child
32 support.

33 (h) (1) "Extraordinary medical expenses" means uninsured expenses over
34 \$100 for a single illness or condition.

1 (2) "Extraordinary medical expenses" includes uninsured, reasonable,
2 and necessary costs for orthodontia, dental treatment, asthma treatment, physical
3 therapy, treatment for any chronic health problem, and professional counseling or
4 psychiatric therapy for diagnosed mental disorders.

5 (i) (1) "Shared physical custody" means that each parent keeps the child or
6 children overnight for more than 35% of the year and that both parents contribute to
7 the expenses of the child or children in addition to the payment of child support.

8 (2) Subject to paragraph (1) of this subsection, the court may base a child
9 support award on shared physical custody:

10 (i) solely on the amount of visitation awarded; and

11 (ii) regardless of whether joint custody has been granted.

12 (j) "Adjusted basic child support obligation" means an adjustment of the basic
13 child support obligation for shared physical custody.

14 (k) "Basic child support obligation" means the base amount due for child
15 support based on the combined adjusted actual incomes of both parents.

16 12-202.

17 (b) (1) Subject to the provisions of paragraph (2) of this subsection, the
18 adoption OR REVISION of the guidelines set forth in this subtitle may be grounds for
19 requesting a modification of a child support award based on a material change in
20 circumstances.

21 (2) The adoption OR REVISION of the guidelines set forth in this subtitle
22 may not be grounds for requesting a modification of a child support award based on a
23 material change in circumstances unless the use of the guidelines would result in a
24 change in the award of 25% or more.

25 12-204.

26 (J) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,
27 WHEN A DISABILITY DEPENDENCY BENEFIT, A RETIREMENT DEPENDENCY BENEFIT,
28 OR OTHER THIRD PARTY DEPENDENCY BENEFIT IS PAID TO OR FOR A CHILD OF AN
29 OBLIGOR WHO IS DISABLED, RETIRED, OR IS RECEIVING BENEFITS FROM ANY
30 SOURCE AS A RESULT OF A COMPENSABLE CLAIM, THE AMOUNT OF THE
31 COMPENSATION SHALL BE SET OFF AGAINST THE CHILD SUPPORT OBLIGATION
32 CALCULATED USING THE GUIDELINES.

33 (2) (I) IF THE AMOUNT PAID TO OR FOR A CHILD EXCEEDS THE
34 CURRENT CHILD SUPPORT OBLIGATION CALCULATED USING THE GUIDELINES, THE
35 EXCESS PAYMENT SHALL BE CREDITED TO ANY EXISTING CHILD SUPPORT
36 ARREARAGE THAT ACCRUED AFTER THE EFFECTIVE DATE THE BENEFITS WERE
37 AWARDED.

1 (II) THE EXCESS PAYMENT MAY NOT BE CREDITED TO ANY FUTURE
2 CHILD SUPPORT OBLIGATION.

3 [(j)] (K) (1) Upon the expiration of a use and possession order or the
4 expiration of the right to occupy the family home under a separation or property
5 settlement agreement and upon motion of either party, the court shall review the
6 child support award.

7 (2) If the allocation of financial responsibility for the family home was a
8 factor in departing from the guidelines under subsection (a) of this section, the court
9 may modify the child support, if appropriate in all the circumstances, upon the
10 expiration of the use and possession order or the expiration of the right to occupy the
11 family home under a separation or property settlement agreement.

12 [(k)] (L) (1) Except in cases of shared physical custody, each parent's child
13 support obligation shall be determined by adding each parent's respective share of the
14 basic child support obligation, work-related child care expenses, extraordinary
15 medical expenses, and additional expenses under subsection (i) of this section.

16 (2) The custodial parent shall be presumed to spend that parent's total
17 child support obligation directly on the child or children.

18 (3) The noncustodial parent shall owe that parent's total child support
19 obligation as child support to the custodial parent minus any ordered payments
20 included in the calculations made directly by the noncustodial parent on behalf of the
21 child or children for work-related child care expenses, extraordinary medical
22 expenses, or additional expenses under subsection (i) of this section.

23 [(l)] (M) (1) In cases of shared physical custody, the adjusted basic child
24 support obligation shall first be divided between the parents in proportion to their
25 respective adjusted actual incomes.

26 (2) Each parent's share of the adjusted basic child support obligation
27 shall then be multiplied by the percentage of time the child or children spend with the
28 other parent to determine the theoretical basic child support obligation owed to the
29 other parent.

30 (3) Subject to the provisions of paragraphs (4) and (5) of this subsection,
31 the parent owing the greater amount under paragraph (2) of this subsection shall owe
32 the difference in the 2 amounts as child support.

33 (4) In addition to the amount of the child support owed under paragraph
34 (3) of this subsection, if either parent incurs child care expenses under subsection (g)
35 of this section, extraordinary medical expenses under subsection (h) of this section, or
36 additional expenses under subsection (i) of this section, the expense shall be divided
37 between the parents in proportion to their respective adjusted actual incomes. The
38 parent not incurring the expense shall pay that parent's proportionate share to:

39 (i) the parent making direct payments to the provider of the
40 service; or

1 (ii) the provider directly, if a court order requires direct payments
2 to the provider.

3 (5) The amount owed under paragraph (3) of this subsection may not
4 exceed the amount that would be owed under subsection [(k)] (L) of this section if the
5 obligor parent were a noncustodial parent.

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
7 October 1, 2004.